Asian-style export-led growth and the role of law

Renis Zaganjori, PhD Candidate
Institute of European Studies, University of Tirana, Albania

Abstract

This paper analyses the growth of Asian economies through its export-led industrialisation policies. Such growth has been uniquely achieved without greater reliance to law, which the neoliberal approach considers integral to development. Among others, this approach relies on private laws for the protection of property and contractual rights for the efficient and smooth functioning of the market where the state has little or no intervention. In this regard, the paper discusses the role of law in development and economic growth. It is submitted that the instrumental use of law and active state intervention in the Asian examples considered in this paper raises significant doubts on the necessity of law for economic growth.

Keywords: law; neoliberal theory; development; economic growth; state intervention; Asian tigers.

Introduction

The sudden economic growth of Asian economies has drawn particular attention to the development process in these countries. Through export-led industrialisation policies, these states have quite uniquely achieved high levels of economic prosperity without greatly relying on law. Indeed, there are differential views on the role that law has to play in processes of development for the achievement of economic success. The neoliberal theory, based on the free market ideal without state intervention, significantly relies on private laws for the protection of property and contractual rights for the efficient and smooth functioning of the market. According to their ideology, law, and in particular private law, is integral to economic success. Whether law is a necessary condition for development remains nevertheless questionable. The instrumental use of law for policy implementation and active state intervention in Asian industrialisation demonstrates an approach to economic development that diverges from the neoliberal one. In these countries, the state leads the economy through a series of strategic policies towards well envisaged developmental goals.

In this paper, I will first examine the neoliberal approach to development, paying particular attention to their arguments about the integrity of a private legal order for economic growth. Next, the Asian model to development will be analysed to demonstrate how industrialisation policies by the state do not contemplate a significant role for law in the economic development of these countries. In this part, it will be shown how the state, through acting as a ‘firm’, manages the market and leads industrial production of the private sector towards high rates of exports to achieve economic prosperity. By taking examples of different countries in Asia, it will be demonstrated that law is not necessarily correlated to development, but rather policy making by the state which is then implemented through law.

The Neoliberal approach and private law

After structuralist theories' failure to bring economic development to developing states, central to which was the idea of state intervention in the economy, the neoliberal orthodoxies, led by Margaret Thatcher and Ronald Reagan, came along in the 1980s with a quite distinct plan to development (a radical critique). Refuting the increased usage of public law as a tool for development, it strongly advocated for the strict separation of public and private activities, which Roepke labelled as the division of Imperium and Dominium, and thus the separation of the economy from the state.[1] Markets were seen as the best arbiters of prices which enabled and prioritised private actors in their dealings, while the state was to take a 'hands-off' approach to development.[2] They emphasised on the neutrality and rationality of the law which gave mutual advantages to market actors.

Fundamental to the neoliberal development model (Salacuse's Model II)[3] for economic growth was an efficient private law sphere, freed from all legal limitations, to enhance economic freedom.[4] Development was to be the outcome of people's responses to opportunities brought to them through the operation of the market, ultimately enabled by private laws.[5] To the neoliberal legal model, laws for the protection of property rights and facilitation of contracts are the *sine qua non* for economic growth.[6] Salacuse asserts that "an effective property rights system supports economic growth and wealth creation by rewarding effort and good economic judgement by actors in the market".[7] As such, a formal private legal order is perceived as integral to economic success in that it regulates market activities, where the state shall not intervene.

For De Soto, the recognition of property laws is essential in that they inject "life into assets and make them generate capital".[8] He argues that the legal recognition in a proprietary system of unused assets, which he calls 'dead capital', was crucial

[1] Roepke, W (1954) *Economic Order and International Law*, 86 Recueil de Cours 203.

[2] Salacuse, J (1999) *From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World* (33) International Law 875 p 880.

[3] Ibid p 882.

[4] Hewitt, T, Johnson, H & Weld, D (1992) *Neoliberal Theory, Industrialization and Development* Oxford University Press.

[5] Bauer, PT (1984) 'Remembrance of Studies Past' pp 27-43 in Meier, G and Seers, D (eds) *Pioneers in Development* Oxford University Press.

[6] Trubek, D (2008) *Developmental State and the Legal Order: Towards a New Political Economy of Development and Law* Fudan University.

[7] See note 2 p 887.

[8] De Soto, H (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* Basic Books 7.

in utilising such assets to make a profit. According to him, such assets could not be properly recognised and enforced to be turned into capital or traded if it was not for an efficient proprietary system that connected the two.[9] Once this conversion process had taken place, the value of the asset becomes 'a metaphysical and insubstantial quantity always in possession of whoever produced it'.[10] Without laws that enable this process, assets remain economically hidden which makes them not accessible and thus not promoting economic growth.[11]

The Asian Counter Example

The economic growth of Asian countries seems to reject neoliberal assertions about law, and specifically private law, being integral to development. The 'Asian Miracles' demonstrate successfully developed economies while taking a radically diverging approach from the neoliberal interpretations of market-driven growth.[12] On the contrary, the development process in these countries has shown the state taking a 'hands-on' approach on the economy. By using law as a tool, state bureaucracy steers the economy through strategic interventions, central to which are the growth of exports by the private sector.[13] This is achieved through the 'embedded autonomy' of the state, which "possesses institutionalised channels where the state apparatus and the private sector continually interact in a constructive manner via a 'joint project' of fostering economic development".[14] These projects are expressions of Export-Led Industrialisation policies of the developmental state in Asian countries, which help achieving and maintaining higher economic growth over time.

Export-led growth is a strategy that primarily focuses on the production for the world market, which is perceived to enhance growth for the economy as a whole. In the high performance Asian economies, the shift towards such exports was made through what Amsden calls 'control mechanisms' by the state.[15] These are a set of institutions that impose discipline on economic behaviour and are based on the principle of reciprocity, through which the state supports national champions and expects in return specific performance standards. As such, subsidies are issued to facilitate production and make the national private sector competitive for the world market, which then is subjected to monitorable performance standards in order to receive continued state assistance.[16] Typically, export performance of manufactured goods at

[9] Ibid p 6.

[10] See note 8 p 40, citing Simonde de Sismondi.

[11] See note 8 p167.

[12] Cypher, J & Dietz, J (2008) *The process of economic development* Routledge Economics 228.

[13] See note 6 p 5.

[14] See note 12 p 224.

[15] Amsden, AH (2001) *The Rise of "The Rest": Challenges to the West from Late-Industrializing Economies* Oxford University Press 8.

[16] See note 12 p 327.

an increasing rate over time is one of the conditions for receiving such benefits.[17] In this way, governments help selected firms become more efficient and productive if they meet export targets, which is highly beneficial to the entire economy. Such policies led to annual export growth in the two-digit range for almost 50 years in most Asian countries.[18] Indeed, Taiwan's information technology (IT) industry was one of the largest export industries in Taiwan and the third largest in the world for IT hardware production, with a compound annual rate of growth at 20.3 percent between 1988 and 1998.[19]

Through strategic planning and systematic policy interventions that targeted selected industries, established specific export targets and developed export marketing institutions, the state in the Asian countries is acting as an 'enterprise', a big firm bound together for the achievement of pre-defined ends.[20] Coase claims that the formation of such an organisation, which acts on higher authority to allocate resources, is highly efficient in that it reduces transaction costs by bringing multiple transactions into as single concern.[21] The government, through managerial decisions of economic planning, acts as an entrepreneur to direct and enhance production and thus facilitate economic growth. Moreover, in relation to law, Jayasuriya asserts:

> …in an enterprise association the validity of rules springs not from the association itself but from the ends or purposes of the organisation. From this perspective, laws are seen in terms of their capacity to produce accurate outcomes that reflect substantial state objectives and interests…In East Asia these state objectives and ends are defined in technocratic and developmental terms.[22]

Therefore, this result-orientated process, contrary to neoliberal assertions on the neutrality of the law, makes an instrumental use of law that is inevitably linked to state interests and goals to development.

Amsden gives the example of the activities of the Board of Investment (BOI) in Thailand to demonstrate the role of law in enabling reciprocal control mechanisms. The BOI was created as a result of the enactment of the Promotion of Industrial Investment Act in 1960, as the central institution to oversee the promotion of Thai industries.[23] The BOI issued benefits to industries, it gave tax breaks, tax protection, subsidised credit, to then expect specific performance standards in return, which were related

[17] Ibid.

[18] See note 15 p 12.

[19] See note 15 p 197.

[20] Jayasuriya, K (1999) 'Introduction: A framework for the analysis of legal institutions in East Asia' pp 1-27 in Jayasuriya, K (eds) *Law, Capitalism and Power in Asia* Routledge London 3.

[21] Coase, R (1937) *The Nature of the Firm* (4) Economica 386 p 392.

[22] See note 20 p 3.

[23] See note 12 p 229.

to export targets, local content requirements, operating scale minima and so on.[24] A large number of industrial projects grew under BOI's authority; in the 1990s a survey showed that approximately 70 percent of the manufacturing firms of the biggest industrial had received privileges and fulfilled performance standard in return under their contract with BOI.[25] It covered roughly 90 percent of major manufacturing projects in Thailand both from private and public sectors, with a $14 billion total investment rate by 1990.[26] Such public laws were the means employed in Thailand for the creation of a state bureaucracy that took over by introducing a series of strategic policies to achieve developmental goals.

According to Jayasuriya, such processes of achieveing economic success in the Asian countries are attributable to what he calls 'political capitalism'.[27] He observes Asian style capitalism to be based on vertical linkages between the state and economic actors, ultimately enabled by law to realise political will. When rejecting the neoliberal orthodoxy on the emergence of legal structures as central for economic success, Jayasuriya refers to the Asian examples where high levels of economic performance had little to do with the development of a credible legal regime for the market to function. Law is seen as a tool for implementing policies, not for providing calculability and predictability to market transactions.[28] Emphasising on administrative guidance and 'stateness' in these countries, Jayasuriya believed that law was undermined by the close connection between the state and the economy, and thus not central to development. [29]

Furthermore, while having similar views of 'ruling by law' to those of Jayasuriiya, Antons is slightly more positive on the role of law in observing the economic development of Japan, Singapore and Indonesia. In particular, he emphasises on the importance of commercial and labour law in these countries that helped the implementation of state strategies by creating harmonious industrial relations and regulated labour markets. For instance, the Employment Act 1968 in Singapore created benefits for disciplined behaviour at the workplace, aiming to increase attraction to foreign investment in "low-valued added labour intensive industries".[30] However, at the same time, he acknowledges the fact that the government wished to retain complete control over its policies to the economy without being required to explain or justify its policy decisions. As such, although Singapore's export-orientated growth strategy is based on

[24] See note 15 p 25.

[25] See note 15 p 24.

[26] Ibid.

[27] See note 20 p 7.

[28] See note 20 p 9.

[29] See note 20 p 2.

[30] Antons, C (2003) 'Japan as a Model? Comparing law and development in Japan, Singapore and Indonesia' pp 216-250 in Antons, C (eds) *Law and Development in East and Southeast Asia* Routledge 220.

tax incentives provided through the Economic Expansion Incentives (Relief from Income Tax) Act and the Income Tax Act, the decision about granting such incentives is ultimately made by the Minister of Finance who grants them 'if he considers it expedient in the public interest to do so' and 'subject to such conditions as he thinks fit'.[31] Such large administrative discretion was thus able to bend the original purpose of laws, and in fact circumvent their application, in order to realise developmental goals.

Conclusion

This essay has purported to show that what matters for economic growth are not laws in themselves but rather state intervention and policy. Having examined the neoliberal belief on the integrity of the private legal order for development, the economic success of Asian countries has proven such assertions to not be entirely accurate. It has been demonstrated through examples in Asian countries and the work of various authors that law is not necessarily linked to development. Law has rather served as a tool for the government to put into practice their strategies to development. It has been asserted that the state instrumentalised on its laws by acting as a big enterprise to efficiently promote its development interests. The state acts in close cooperation with the market in a result-orientated process which majorly saw the growth of exports as the main vehicle for economic growth. This was done through the state influencing industry performance by way of getting the control mechanisms 'right', contrary to neoliberal assertions of getting the prices 'right'.[32] Indeed, as Kohli asserts:

> …there are hardly any significant examples in the developing world, now or in the recent past, where industrialization has proceeded very far without state intervention. The underlying reason is simple but powerful: Private investors in late-late-developing countries need organized help, help that effective state are most able to provide to overcome such obstacles as capital scarcity, technological backwardness, rigidities in labor markets, and to confront the overwhelming power of foreign corporations and of competitive producers elsewhere.[33]

Bibliography

1. Amsden, AH (2001) *The Rise of "The Rest": Challenges to the West from Late-Industrializing Economies* Oxford University Press.
2. Antons, C (2003) 'Japan as a Model? Comparing law and development in Japan, Singapore and Indonesia' pp 216-250 in Antons, C (eds) *Law and Development in East and Southeast Asia* Routledge.

[31] See note 30 p 229.

[32] See note 15 p 11.

[33] Kohli, A (2004) *State-Directed Development: Political Power and Industrialization in the Global Periphery* Cambridge University Press 377.

3. Bauer, PT (1984) ‘Remembrance of Studies Past’ pp 27-43 in Meier, G and Seers, D (eds) *Pioneers in Development* Oxford University Press.
4. Coase, R (1937) *The Nature of the Firm* (4) Economica.
5. Cypher, J & Dietz, J (2008) *The process of economic development* Routledge Economics.
6. De Soto, H (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* Basic Books.
7. Hewitt, T, Johnson, H & Weld, D (1992) *Neoliberal Theory, Industrialization and Development* Oxford University Press.
8. Iovan, M. (2014). Eco-Education&58; A Required Element of Public Policies for Sustainable Social and Economic Development. *Academicus: International Scientific Journal*, *2014*(9), 14-28.
9. Jayasuriya, K (1999) ‘Introduction: A framework for the analysis of legal institutions in East Asia’ pp 1-27 in Jayasuriya, K (eds) *Law, Capitalism and Power in Asia* Routledge.
10. Kohli, A (2004) *State-Directed Development: Political Power and Industrialization in the Global Periphery* Cambridge University Press.
11. Musaraj, A. (2012). Tourism development, touristic local taxes and local human resources: A stable way to improve efficiency and effectiveness of local strategies of development. *Academicus International Scientific Journal*, (6), 41-46.
12. Roepke, W (1954) *Economic Order and International Law*, 86 Recueil de Cours.
13. Salacuse, J (1999) *From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World* (33) International Law.
14. Trubek, D (2008) *Developmental State and the Legal Order: Towards a New Political Economy of Development and Law* Fudan University.